IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.Revn.No. 769 of 1995
Date of decision: 30.10.2007

Ram Sarup

...Petitioner

Versus

The State (U.T.Chandigarh).

...Respondent

Coram: **Hon'ble Mr. Justice Harbans Lal**

Present: Mr. Bipan Ghai, Advocate for the petitioner.

Mr. Hemant Bassi, Standing counsel for U.T.Chandigarh.

***

Harbans Lal, J.

This revision is directed against the judgment and order dated 13.5.1993 passed by the Court of Chief Judicial Magistrate, Chandigarh whereby he convicted and sentenced the petitioner to undergo rigorous imprisonment for six months and to pay a fine of Rs. 1000/- or in default thereof to further undergo rigorous imprisonment for one month as well as the judgment and order dated 21.9.1995 rendered by the Court of Additional Sessions Judge, Chandigarh vide which the appeal was dismissed.

The facts of this case lies in a narrow compass. The petitioner was selling Carbonated water (Orange Sweetened). He was in possession of 300 bottles thereof for sale. After serving notice Ex.PA upon petitioner, on 13.6.1990 nine bottles (1800 MLs) of Sweetened Carbonated water (Orange) were purchased against payment of Rs. 12/- vide receipt Ex.PB by

the Government Food Inspector. The sample was made homogeneous and three separate samples in dry and clean bottles were segregated. After observing usual formalities, spot memo Ex.PC was prepared. One sample was sent to the Public Analyst alongwith Form VII. A copy of the same with the specimen impression of the seal was separately sent to the Public Analyst, retaining two parcels of the sample with the Local Health Authority. On receipt of report Ex.PD of the Public Analyst, the complaint Ex.PE was lodged in the Court. Procedure for trial of warrant case was adopted. After recording pre-charge evidence and finding prima facie case, the petitioner was charge-sheeted under Section 16(1)(a)(i) read with Section 7 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as 'the Act'). After recording the evidence, statement of the accused under Section 313 Cr.P.C. and hearing the Government Food Inspector and the learned defence counsel, the accused was convicted and sentenced by the learned trial Court as noticed at the outset.

Feeling aggrieved with the same, the petitioner preferred an appeal, which was dismissed by the Court of Additional Sessions Judge, Chandigarh.

I have heard the learned counsel for the parties and perused the records.

Mr. Bipan Ghai, Advocate appearing on behalf of the petitioner urged with great vehemence that a glance through the copy of the Public Analyst report would reveal that it is absolutely silent about the percentage of Brominated Vegetable Oil and to fill up this lacuna, as is borne out from

the record, an application was moved by the prosecuting Inspector for summoning of the Public Analyst and the same was allowed but despite that the Public Analyst was not examined and this clearly indicates that the prosecuting Inspector was sure that this case may fail merely on the solitary ground that Public Analyst Report was silent about the percentage of the Brominated Vegetable Oil and thus, this lacuna in the Public Analyst Report is enough to accept this revision.

He further submitted that if the Court comes to the conclusion that mention of the percentage of the Brominated Vegetable Oil was not essential, a lenient view may be taken against the petitioner.

On the other hand Mr. Hemant Bassi, Advocate representing U.T. Chandigarh has maintained that the case of the prosecution cannot be thrown out merely because the prosecution did not later ventured to examine the Public Analyst.

I have given a deep and thoughtful consideration to the rival contentions. There is no dispute with the proposition that report of the Public Analyst is per se admissible. Of course an endeavour was made to examine the Public Analyst, but he was given up. This fact in itself is not sufficient to draw an adverse inference against the prosecution. If the petitioner was dissatisfied with the Public Analyst Report or that according to him the same contained an ambiguity, he could have called the Public Analyst for being examined in his defence for the purpose of clarification. More to the point, the case does not hinges merely upon the Public Analyst Report, but also the other evidence which trickled from the respective

mouths of Mr. O.P. Gautam, Food Inspector as well as Surinder Kumar PW. The Court of learned Additional Sessions Judge has observed that it is abundantly clearly that Brominated Vegetable Oil as a emulsifying and stabilizing agent could not have been used by the petitioner in Carbonated water. To my mind, no exception can be taken to this observation. Consequently the contention raised by Mr. Ghai is jettisoned.

The sample was drawn as far back as on 13.6.1990. Needless to say that period exceeding 17 years has gone by. As per the trial Court's judgment, the petitioner was 60 years of age. Now he might be in his seventies.

Mr. Ghai has relied upon the observation made by this Court in re: **Sawan Mal vs. State of Haryana** 2007(3) Recent Criminal Reports, 975 wherein the accused was convicted in an offence under the Prevention of Food Adulteration Act, 1954. The accused was 60 years of age when the sample was taken. An identical position exists in this case. In **Sawan Mal's** case (supra) the sentence of imprisonment was reduced to that of fine of Rs. 5000/- only.

Taking into consideration the entirety of the facts and circumstances of the case, this revision petition is disposed of in the following terms:

(1) *The conviction of the petitioner shall remain intact;*

(2) *The sentence of imprisonment awarded to the petitioner is reduced to that of fine of Rs. 5000/- which shall include the fine of Rs. 1000/- already deposited by him. The fine shall be*

deposited within a period of three months from today with the trial Court, failing which he shall be taken into custody to serve out the substantive sentence inflicted by the Courts below.

October 30, 2007 **(HARBANS LAL)**
gsv **JUDGE**